88-165

Supreme Court, U.S.
FILED
JUL 19 1988
JOSEPH E. SPANIOL, JR.
CLERK

SUPPLEMENTAL APPENDIX

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

JOHN F. ROMANN

Petitioner

v.

SECURITIES AND EXCHANGE COMMISSION

- and -

THE AMERICAN BOARD OF TRADE INC., et al

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OPF CERTIORARI

John F. Romann, Pro se
Box 312, R.D. #4
Easton, PA. 18042

(215) 252-7259

SUPPLEMENTAL APPENDIX

Appendix H — Copy of Memorandum Opinion & Order, 83 Civ 213 (SWK), February 2, 1987.

Appendix I — Copy of letter from Special Master & Interim Receiver addressed to ALL CUSTOMERS AND CREDITORS OF ABT INC. and ITS RELATED ENTITIES, dated February 13, 1987, with enclosures at end (1) 28 & 1292 and (2) Rule 5, Appeals by Permission Under 28 USC 7 1292.

Appendix J — Copy of timely filed Notice of Appeal in USDC, SDNY, dated March 4, 1987.

Appendix K — Copy of Filing Fee Receipt, USDC, SDNY

Appendix L — Copy of letter from Pro Se Office, USDC, SDNY, concerning papers and filing fee.

Appendix M — Copy of letter from U.S. Court of Appeals-Second Circuit, dated March 18, 1987, confirming filing for appeal on March 4, 1987; Copy of Memorandum from U.S. Court of Appeals-Second Circuit, VOIDING letter of March 18, 1987, and ordering that Notice of Appeal is being construed as a motion under FRAP Rule 1292(b)

SUPPLEMENTAL APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

- against -

THE AMERICAN BOARD OF TRADE, INC., ARTHUR N. ECONOMOU, PHYLLIS H. ECONOMOU, and the AMERICAN BOARD OF TRADE,
Defendants.

83 Civ. 6213 (SWK)

MEMORANDUM OPINION AND ORDER

APPEARANCES:

ARTHUR N. ECONOMOU, Pro Se
9 South William Street
New York, New York

THE SECURITIES AND exchange COMMISSION
26 Federal Plaza
New York, New York 10278
By: CHARLES PADGETT

MILTON GOULD,
Interim Receiver
330 Madison Avenue
New York, New York

SHIRLEY WOHL KRAM, U.S.D.J.

Pursuant to this Court's order of July 31, 1986 appointing Milton S. Gould, Esq. Special Master, Mr. Gould submitted his report and recommendations (the "Report") to the Court on November 5, 1986. The key finding in the Report, which is annexed (to the original) as Appendix A, is that the American Board of Trade ("ABT") has aggregate liabilities of approximately $79 million against which it holds approximately $30 million in assets. This liability, combined with ABT's inability to generate income due to the injunction on its commercial paper program, led the Special Master to recommend that ABT be dissolved and liquidated. The Court agrees that ABT should be liquidated pursuant to the recommendations set forth in the Report.

Immediately after the Special Master filed the Report, the Court authorized

him to mail a summary of the Report to all commercial paper holders (the "paper holders"). This summary included instructions for obtaining copies of the Report, informed paper holders that the Court's deadline for filing objections to the Report was January 5, 1987, and advised that the Court would hold a public hearing at which individuals could comment on the Report on January 19, 1987. The Court received nearly 200 written objections, and approximately 60 persons attended the hearing.

The objections bear eloquent witness to the destruction that ABT has wrought upon the lives of thousands of investors, including individuals who have invested their life savings, elderly persons in need of their money for medical care, and couples saving for their retirement or for their childrens' education. Each

expressed anguish and disbelief at facing the loss of hard-earned and carefully-saved monies. The Court is sympathetic to each of the investors and regrets that they are now bearing the brunt of ABT's unlawful activities. The Court intends to do everything in its power to ensure as full a return on each investment as possible. However, the status of defendants' business--------an unlawful commercial paper operation nearly $50 million in debt--provides the Court with limited options.

The objections fall into a number of categories which the Court discusses below.

A. THE DISSIPATION OF ABT'S ASSETS

A number of paper holders do not understand how ABT became so deeply in debt and ask for a full accounting of how

its funds were used. While it is impossible, given the incomplete financial records ABT maintained,to trace each lost dollar, some conclusions are possible.

1. The Structure and operation of ABT

ABT is composed of 34 related companies. Ten of these companies are operational, fourteen are capitalized but dormant, and ten are uncapitalized and dormant. These companies form what defendant Arthur N. Economou calls the ABT National Market System, which is purportedly a national exchange and market place system. In reality, the majority of the National Market System's corporations are shells which produce no income but incur expenses. The vast amount of ABT's income was derived from its commercial paper program, and this income was used to help establish and pay

the expenses not merely of the commercial paper program, but of the entire National Market System as well.

2. Shortfall in Investments

In recent years, ABT offered commercial paper at a much greater discount than it earned on its own investments. For example, at one point ABT invested all its money in Certificates of Deposit paying an average of 6.3 percent interest, and it offered its commercial paper at a discount rate of 10 percent.

3. Loans to Arthur and Phyllis Economou

The Special Master reports that ABT's records reveal outstanding loans to the Economous in the amount of $521,090.00. The loans are interest free, and no terms have been discovered. The Economous claim that these loans are

offset by nearly $1 million that ABT owes them in commissions. However, no documents or agreements have been found to support this claim. The Court has ordered the Special Master to investigate the Economous' liability to ABT, and the Court has frozen up to $500,000 of the Economous' assets pending a final determination of the issue. The Court has ordered the Special Master to investigate the Economous' personal assets. The Economous' sworn testimony indicates they have much less than $500,000 in assets, and all other efforts at locating other assets---including incarcerating Arthur Economou for refusal to discuss his personal assets---have been unsuccessful.

4. Criminal and Civil Contempt of Arthur Economou

On October 8, 1986, this Court held Arthur Economou in criminal and civil

contempt because he redeemed $175,000 in commercial paper after July 18, 1986, in violation of the Court's order prohibiting him from doing so. The Court ordered Economou to repay the $175,000 to ABT. Thus far, Economou has repaid approximately $35,000 which he claims exhausts all of his assets. The Special Master is continuing his investigation of Economou's personal assets in an attempt to recoup the $140,000 balance.

5. Other Legal Proceedings Against ABT

In an entirely separate action from this one, the Commodities Futures Trading Commission ("CFTC") sued the ABT for commodities laws violations. In that case, the judge ordered ABT to disgorge $126,706 to make whole persons who lost money through ABT's commodity options programs, $31,074.26 to pay the trustee in the case and $179,183 to pay the

accountants. A fund in the amount of $336,936.26 was created to cover this judgment. The Special Master recommends that the trustee in the CFTC proceeding be treated as a judgment creditor, entitled to no higher priority than ABT's unsecured creditors and customers. The Court feels that the CFTC litigation raises a number of issues which still need consideration. The fund should remain intact pending resolution of those issues, and should not be distributed, at this point, with the rest of ABT's assets.

B. ALLOWING ABT TO CONTINUE OPERATIONS

Arthur Economou suggests that he be allowed to sell ABT as a going concern, which would apparently include the commercial paper business. Alternatively, he suggests that even if

the commercial paper program cannot operate, ABT should be allowed to gradually rebuild itself using its other businesses and eventually become a viable organization once again. A number of paper holders also stated that ABT has had a perfect service record for a number of years, and should be allowed to continue to operate.

Three problems confront any plan to rehabilitate ABT. First, ABT is enjoined from issuing commercial paper because it does not have sufficient financial records to register the paper with the SEC. In the absence of its commercial paper program, ABT has no substantial source of income. Second, ABT has generated net losses exceeding $28 million from 1980 through 1984 and incurred losses of approximately $17.5 million in 1985 and 1986. Third, ABT is

indebted in the amount of nearly $50 million. With no source of income, high operating losses, and heavy debts, ABT is no longer a viable operation, and could not be sold.

Many paper holders also suggest that ABT is not insolvent, as it is not uncommon for financial institutions not to have enough assets on hand to cover all liabilities. ABT, however, does not have any significant sources of income, and thus, there is no possibility that it could meet its liabilities. The status of other institutions is irrelevant to this case.

C. THE BEHAVIOR OF THE SEC

Many paper holders criticized the Securities and Exchange Commission ("the S.E.C") for allowing ABT to sell unregistered commercial paper for 14 years before attempting to enjoin the

sales in 1983. They argue that since the SEC allowed ABT to issued unregistered commercial paper for so long, ABT should be allowed to continue to issue unregistered commercial paper. This would supposedly protect investors and alleviate harm and suffering.

The SEC's alleged delay in bringing this case does not change the law that requires commercial paper to be registered. Even if equity somehow dictated that ABT be allowed to issue unregistered paper, the records of ABT indicate that it has been redeeming outstanding commercial paper with money it receives from new investors and rollovers. Given ABT's recent operating losses, its increasing liabilities, and its legal problems, ABT's customers would be unlikely to rollover their paper, and ABT could attract few new

investors. It would not be long before ABT's assets were drained and all remaining commercial paper holders were left "holding the Bag". Liquidating ABT now guarantees as equitable as possible a return to allpaper holders.

D. PRIORITY FOR TREASURY BILL AND SPOT COMMODITY HOLDERS

As part of its business, ABT purchased Treasury Bills ("T-Bills") and commodities for its customers. T-Bills and commodities purchased through these programs represent $1,525,000 and $916,901 of ABT's assets, respectively. The Special Master concludes that T-Bill holders have a priority claim for the value of their investment, and that spot commodities holders have a priority claim for the specific and identifiable items held in their names. The Special Master recommends, however, that if the Court orders priority distributions, the order

be certified for appeal pursuant to 28 U.S.C. & 1292(b). Many commercial paper holders objected to priority status for T-Bill and commodities holders. The following factual findings and legal conclusions are based on the Special Master's report and the Court adopts them.

The purchase of T-Bills by ABT is made upon the customer's remittance to ABT in New York of the appropriate funds by certified check, money order or bank draft and a signed application form. Funds so received are deposited into a checking account maintained by ABT at Marine Bank, N.A. in Milwaukee, Wisconsin. This account is used exclusively for the T-Bill program.

Both the original application form and "safekeeping receipts' sent to customers after their T-Bills are

purchased state that ABT is acting as agent for their T-Bill customers and that the T-Bills are being held for safekeeping. Each T-Bill customer is assigned a separate account number.

Marine Bank, N.A. sells T-Bills to ABT's accounts pursuant to orders placed by ABT each Monday morning. Simultaneously, Marine receives reinvestment instructions from ABT for maturing T-Bills. ABT's checking account is debited in the corresponding amounts and T-Bills purchased are held by Marine in the name of "American Board of Trade, Inc., as nominee for others".

ABT sends a confirmation letter to Marine Bank stating the names and addresses of persons who own the T-Bills as well as their individual account numbers and terms of purchase.

Three weeks prior to maturity of

the T-Bills, a Maturity Notice is sent by Marine to ABT, indicating the date of maturity and amount of maturing T-Bills. Notification is then sent by ABT to their T-Bill customers indicating that their T-Bill is about to mature. The T-Bill customer is given the option to receive full remittance or reinvest the value of his or her T-Bill.

Proceeds from matured T-Bills are automatically credited to the checking account of ABT by Marine. This account is used by ABT to pay customers who have chosen to redeem their matured T-Bills and to purchase new T-Bills.

Through the operation of its T-Bill program, ABT has established itself as either a trustee, an agent, or an agent-trustee. All three are fiduciaries with a duty to act for the benefit of another. The existence of an agency does not

preclude the finding of a trust and where both are present the fiduciary is an "agent-trustee". Restatement (Second) of Agency §14 B comment a (1977).

Three elements are required to establish an agency. First, there must be a manifestation by the principal that the agent shall act for Him. Second, the agent must accept the undertaking. Lastly, there must be an understanding between the parties that the principal is to be in control of the undertaking. Restatement (Second) of Agency §1 comment b (1977); AHN v. Rooney, Pace Inc. 624 F Supp. 368 (S.D.N.Y. 1985). Control by the principal is essential -- without it there will be no agency. AHN, 624 F. Supp. at 370. 1/

Similar elements exist in a trust relationship. These include: (i) a settlor with legal competence to make a

disposition of legal title to his property; (ii) an ascertainable trust res; (iii) a beneficiary; (iv) a present and complete disposition of the trust res; and (v) an unequivocal intention by the settlor to create a trust. See generally, 76 Am. Jur. 2d Trusts &1, et seq. (1975)

The distinction between a trustee and agent lies in the element of control and the extent of disposition of the property. A party who merely has possession of property of another and, although authorized to deal with that property, is subject to control by its owner, is an agent of the owner. A trustee, however, holds a legal or equitable title to the property placed in his possession and may or may not be subject to the beneficiary's control. An agent-trustee is one who holds a title

but is also subject to control by the benificiary. Restatement (Second)Agency & 14B and comments a-c (1977)

ABT, in transacting with its T-Bill customers, appears to be acting more like a trustee than an agent. Although the original agreement addresses ABT as "agents", the use of that language is not dispositive and must be weighed in light of all the circumstances.

The main element for creation of an agency, that of control, is lacking. The T-Bill customers maintain little, if any, control over ABT and the way it handles their accounts. There was nothing in the agreement providing for where or how ABT was to hold the T-Bills other than that the T-Bills were to be held by ABT for "safekeeping". Beyond the original agreement, the confirmation and the notice of maturity, there was no other

regular correspondence between the parties over the course of three to six years. It is doubtful that the T-Bill customers were even aware of where their securities were being held.

Conversely, assuming that the T-Bill customers were legally competent, all of the elements necessary to create an express trust are present. The funds and T-Bills in the safekeeping account represent an ascertainable trust res. The T-Bill customers made a present and complete disposition of the res upon remittance of a certified check, money order, or bank draft made payable to ABT. There was an unequivocal intention by the T-Bill customers to create a trust manifested by the language on the signed agreement.

Additionally, ABT, by acknowledging that they were holding the securities for

their T-Bill customers to be returned upon maturity, established the creation of an express trust. Millbank v. Jones, 127 N.Y. 370, 374 (1891).

It is clear that where, as here, money is delivered by one person to another to be held for a certain purpose, an express trust is created. McKee v. Lamon, 159 U.S. 317, 324 (1895)

Under the rule of "trust pursuit", a trust will follow property through all changes as long as such property or its proceeds are identifiable. Independent Coal & Coke Co. v. United States, 274 U. 640, 647 (1927) See generally, 76 Am. Jr. 2d Trusts &&251-258(1975). It is unnecessary to conclude that a trust relationship was originally established for this rule to apply because funds or property coming into the hands of an agent are also held in trust by the agent

for the principal. State Dept. of Agriculture v. Tillamook Cheese and Dairy Association, 251 Ore. 393 (1968), Thus,

"(W)here money or property is entrusted to (an) agent for a particular purpose, it is impressed by law with a trust in favor of the principal until it has been devoted to such purpose; and if it is wrongfully diverted by the agent, such trust follows the fund or property...so long as it can be identified..."

Air Traffic Conference v. Downtown Travel Center, Inc., 87 Misc. 2d 151, 154, 383 N.Y.S. 2d 805, 806-807 (N.Y. Sup.Ct.N.Y. Co. 1976). Even if the fund is placed in the trustee's general account, the trustee does not become a mere debtor of the settlor. Id. at 806. The same is true of an agent who deposits funds of his principal in an account in the agent's name---the funds remain that of the principal and are not subject to claims of the agent's creditors. Kinnison v.

Guaranty Liquidating Corp., 18 Cal. 2d 256 (1941).

Additionally, New York E.P.T.L. & 11-1.9 gives fiduciaries express (although somewhat limited) authority to commingle securities from different trusts, recognizing that the merged securities do not lose their identity as individual trust res. See also In re Will of Coe, 80 Misc. 2d 374, 363, N.Y.S. 2d 265 (N.Y. Surr. Ct. Nassau Co. 1975).

By placing the T-Bills in a safekeeping account which it held as "nominee for others", ABT did not destroy the trustee/settlor relationship it had with its customers. Likewise, the T-Bills remained intact as the identifiable trust res, so that the trust "followed" the funds and the T-Bills into the safekeeping account.

ABT's T-Bill customers maintain

their priority status over general unsecured creditors of ABT, despite the appointment of a receiver.

The purpose of a receivership is to place the property in litigation under control of the court so that it may be maintained and held for distribution pending final adjudication of the rights of the parties. 66 A. Jur. 2d Receivers &248 (1975). Generally, it is the duty of a receiver to preserve existing priorities among the claims, interests, and liens for such distribution. Id at 251. A receiver should not pay or discharge any corporate obligations except as he is directed by the court. Woodrull v. Erie R. Co., 93 N.Y. 609 (1883). see generally, 4 White, White on New York Corporations, &&1201-1218, (13th ed. 1985).

It is recognized, both in case law

and by statute, that a trust priority survives the appointment of a receiver to the trustee/company. See e.g., N.Y. Bus. Corp. L. &1210 (McKinney 1986) and Van Dyck v. McQuade 86 N.Y. 38 (1881).

For example, where a bank declared a dividend for its shareholders, the court, in an action brought on by the bank's receiver, held that from the moment it is declared, the dividend is trust property of the shareholder. Van Dyck v. McQuade, 86 N.Y. 38 (1881)

"(A)lthough the company was insolvent..money appropriated and set apart for distribution among the stockholders by way of dividend became a trust in the hands of the corporation, to which the stockholders as individuals had acquired vested rights, and they consequently were entitled to the fund in preference to the creditors of the corporation".
Id at 52.

Likewise, in a receivership governed by Article 12 of the New York Business Corporations Law, debts owing by the

corporation as trustee are paid well ahead of general creditors of the corporation. N.Y. Bus. Corp. Law & 1210 (McKinney 1986).

As to its commodities business, ABT sold commodities contracts to its customers and arranged for the safekeeping of customers' commodities at various repositories around the country. Applying the same analysis to the commodities program, the commodities customers also appear to be entitled to priority distribution.

Based on the above, the Court orders that the T-Bill holders and commodities holders with identifiable property be given priority status in the distribution of ABT's assets. The Court, however, certifies this order for interlocutory appeal pursuant to 28 U.S.C. &1292 (b). The issue of priority is purely legal as

there is no dispute as to the underlying facts. While the authorities the Court has relied on are still good law, they are generally old, and may not reflect current equitable notions. Certification will also materially advance the determination of this litigation. If an interlocutory appeal were not granted and ABT were liquidated in accord with this order, commercial paper holders would effectively be barred from challenging the priority distribution, as the money would already be distributed.

E. RESERVE ACCOUNTS AND FORWARD COMMODITIES PROGRAM

A number of individuals informed the Court that they hold cash in general reserve accounts and reserve accounts affiliated with ABT's spot and forward markets and supervised basket programs. They request priority status in the distribution of this money. The Special

Master's analysis of ABT's handling of the funds revealed that all of these monies were deposited into ABT's general accounts and were used by ABT in the ordinary course of its business. There was no segregation of funds which was held in reserve" nor do the application forms create any basis for establishing a trust relationship. These obligations would constitute general unsecured obligations of ABT and, therefore, should not be given any special treatment. The Court thus orders that these cash participants be treated as such. Since this order is based on a legal issue, and the same equitable considerations as with the priority distribution apply, the Court certifies this portion of its order to the Court of Appeals along with its order pertaining to Treasury Bill and spot commodities distribution. (SA H-20)

F. FUND FOR ADMINISTRATIVE EXPENSES AND THE SPECIAL MASTER'S RATE OF PAY

Many paper holders objected to the Master's recommendation that $1 million be set aside for administrative expenses in the belief that it is earmarked for payment to the Master. The purpose of the fund is to ensure that money is available to pay personnel to distribute ABT's assets. Any funds left in the fund will be distributed to noteholders. This fund will allow an orderly distribution of funds and the Court approves it. As to the Special Master's rate, $200. per hour is significantly below his usual rate, and the Court believes it is reasonable.

G. PRIORITY STATUS TO SPECIAL INTEREST GROUPS

Many paper holders requested that priority status be given to various

special interest groups, such as senior citizens, minors, church and charitable groups, and pension funds. Each of these requests demonstrated the grave destruction sown by the American Board of Trade's operations. Nevertheless, there is no legal authority justifying the priority treatment of those groups.

H. OUTSTANDING PURCHASE ORDERS

A number of individuals indicated that they ordered commercial paper in July 1986, sent ABT checks which ABT cashed, and never received their commercial paper. The Special Master recommends that these claims be dealt with on an individualized basis, and the Court agrees. The appropriate time to deal with the issues raised by these individuals is as individual claims are received.

The Court has considered all the

other objections to the Special Master's Report and finds them to be without merit. The Court thus adopts the Special Master's recommendations in full, except as they relate to the payment of the CFTC claims, which the Court requests the Special Master to investigate further. The Court orders that the Special Master is reappointed as Receiver of the ABT entities with the powers and responsibilities described in the Court's orders of September 2, 1986 and September 26, 1986. The Receiver shall notify all customers and creditors of ABT that they must file a statement of their claim with the Court by April 1, 1987.

SO ORDERED.

Dated: New York, New York
February 2, 1987

SHIRLEY WOHL KRAM
UNITED STATES DISTRICT JUDGE

ENDNOTE:

1. The application of New York law is appropriate because the transactions were carried out in ABT's New York office.

SUPPLEMENTAL APPENDIX I

SHEA & GOULD
330 Madison Avenue
New York, New York 10017
(212) 370 8000

February 13, 1987

To All Customers and Creditors
of The American Board of Trade,
Inc. and Its Related Entities:

By Memorandum Opinion and Order dated February 2, 1987 (the "Order"), U.S. District Judge Shirley Wohl Kram ruled on the recommendations contained in my report to the Court dated November 5, 1986 (the "Report"). Because of its importance to you, a complete copy of the Court's Order is enclosed herewith.

A. Summary of Rulings

In summary, the Court found that "(w)ith no source of income, high operating losses, and heavy debts, ABT is no longer a viable operation, and could not be sold" as a going concern (Order at

7). Accordingly, the Court ruled "that ABT should be liquidated pursuant to the recommendations set forth in the Report" (Order at 2).

The Court held that, in accordance with the trust principles set forth in the Report, Treasury bill customers are entitled to the return of their investments in full, and that spot commodities customers are entitled to the return of the specific and identifiable property held in their names (Order at 8).

The Court found that no other customers or creditors of the American Board of Trade, Inc., or its related entities (the "ABT Entities") are entitled to priority. Therefore, all customers and creditors other than Treasury bill and spot commodity owners shall be treated as general unsecured

creditors of the ABT Entities and shall be entitled to receive their pro rata share of the remaining assets of the ABT Entities, after the payment of administrative expenses.

B. Certification Under Section 1292(b)

In accordance with the recommendation made by the undersigned at the January 19, 1987 hearing before the Court, the Court has certified for interlocutory appeal under 28 U.S.C. &1292(b) the issue of whether, as a matter of law, ABT's Treasury bill and spot commodity customers are entitled to priority status as described above. Section 1292(b) (a copy of which is enclosed herewith) permits applications for permission to appeal to be filed from orders, such as the one involved in this case, which are otherwise not then appealable but which "involve ( ) a

controlling question of law as to which there is substantial ground for difference of opinion," and where "an immediate appeal from the order may materially advance the ultimate termination of the litigation".

Any person who believes that he or she is aggrieved by the rulings in the Order relating to priority treatment of Treasury bill and spot commodities customers may petition the U.S. Court of Appeals for the Second Circuit for permission to appeal. The procedure for making such a petition is set forth in Rule 5 of the Federal Rules of Appellate Procedure (F.R.A.P.), a copy of which is also enclosed.

Please note that petitions for permission to appeal pursuant to 28 U.S.C.&1292(b) must be filed with the Clerk of the Court of Appeals, U.S.

Courthouse, Foley Square, New York, New York 10007, within ten days after the entry of the Order appealed from in the District Court. In this case, Judge Kram has agreed to stay certification until ten days after the undersigned has advised the Court that all ABT customers and creditors have been mailed a copy of the Order. It is anticipated that the Court will be so advised on February 17, 1987. Therefore, in order to comply with F.R.A.P. 5, any and all petitions must be filed on or before March 9, 1987.

Should you have any questions concerning the deadline for filing petitions for permission to appeal from the Order, you may confirm that date by telephoning ABT at (212) 943-0100 on or after February 17.

C. The Bar Date and Submission of Claims Against ABT

In its Order, the Court has

established April 1, 1987 as the "bar date"--the last date on which any customer or creditor may file a claim against the ABT Entities. Enclosed you will find a Claim Form. If you wish to assert a Claim against the ABT Entities, please complete the form carefully, following the instructions on the form. Then mail the form and any documentation required therein to the following address: Milton S Gould, Esq.
The American Board of Trade, Inc.
9 South William Street
New York, New York 10004

All claims must be received on or before April 1, 1987 in order to be recognized. All persons who have previously written to us asserting a claim against ABT are required to follow the instructions on the Claim Form. Only claims submitted on Claim Forms will be considered.

Once the claims received have been reviewed and verified, we will proceed to

make distribution to the customers and creditors on a pro rata basis in accordance with the Court's Order. It is anticipated that, barring any delays, an initial distribution of funds will occur during May 1987. A final distribution will not be made until all of the ABT Entities' assets have been completely realized and all claims have been resolved. Please be advised that in the event any party appeals from the Order, it is possible that the Court of Appeals may stay the liquidation and distribution of the ABT Entities' assets. This would, of course, alter the timetable set forth herein.

Very truly yours,

Milton S. Gould
Special Master and
Interim Receiver

Enclosures

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order. Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

RULE 5. Appeals by Permission Under 28 U.S.C. &1292(b)

(a) Petition for Permission to Appeal.

An appeal from an interlocutory order containing the statement prescribed by 28 U.S.C. &1292 (b) may be sought by filing a petition for permission to appeal with the clerk of the court of appeals within 10 days after the entry of such order in the district court with proof of service on all other parties to the action in the district court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be

sought within 10 days after entry of the order as amended.

b. Content of Petition: Answer. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the district court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law and opinion relating thereto. With 7 days after service of the petition an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) Form of Papers: Number of Copies. All papers may be typewritten. Three copies shall be filed with the original, but the court may require that additional copies be furnished.

(d) Grant of Permission: Cost Bond: Filing of Record.

Within 10 days after the entry of an order granting permission to appeal the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if

required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon receipt of such notice the clerk of the court of the court of appeals shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rules 11 and 12(b). A notice of appeal need not be filed.

(As amended Apr. 30, 1979, eff. Aug.1,1979)

SUPPLEMENTAL APPENDIX J

Pro Se Office
United States District Court
Southern District New York
Office of the Clerk
U.S. Courthouse
Foley Square, New York, NY 1007

Raymond F. Burghardt, Clerk

Appeal Instructions:

Complete this form, make one copy of it, then return the original and the copy to the Pro-se Office, United States District Court (S.D.N.Y.), 40 Centre Street, Foley Square New York, New York 10007.

The fee to file, docket and transmit your notice of appeal is $70.00, payable to the Clerk of Court, USDC. NO PERSONAL CHECKS ARE ACCEPTED.

If you wish to file your appeal without paying the fee, fill out the declaration of poverty form provided by the Pro-Se Office and submit it with your

notice. Note that this request to waive the fees need not be made if you were granted forma pauperis status when you commenced your action in this court.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE SECURITIES AND EXCHANGE COMMISSION

V.

The American Board of Trade, Inc., Arthur N. Economou, Phyllis H. Economou, and the American Board of Trade

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Docket Number: 83 Civ. 6213 (SWK)

Judge KRAM

Notice of Appeal

To The United States Court of Appeals

For the Second Circuit

Notice is hereby given that JOHN F. ROMANN appeals to the United States Court

of Appeals for the Second Circuit from the decision and order of U.S.D.C. (S.D.N.Y.) dismissing her order to liquidate ABT on the 2nd day of February 198 7

DATED: March 4, 1987
New York, New York

cc. Opposing Party

John F. Romann
signature

Box 312 R.D. #4
address

Easton, PA. 18042

"U.S. District Court"
Pro Se Office
Filed
March 4, 1987
" S.D. of N.Y. "

SUPPLEMENTAL APPENDIX K

AO 83 ORIGINAL 143269
Rev. 7/83

Receipt for Payment

UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF NEW YORK

at

ROMANN

N/A 83 Civ 6213 (SWK)

Account Code

GENERAL AND SPECIAL FUND Account

331 Civil Cases 331

Amount

$ 70.00

Deputy Clerk D P

SUPPLEMENTAL APPENDIX L

Pro Se Office

UNITED STATES DISTRICT COURT
Southern District of New York
OFFICE OF THE CLERK
U.S. Courthouse
Foley Square, New York, N.Y. 10007

Raymond F. Burghardt, Clerk

To Cashier's:

Mr. Romann is filing an appeal, his papers are in order and he is paying the filing fee.

Thank you

Pro Se

SUPPLEMENTAL APPENDIX M

DISTRICT COURT FEE DUE LETTER

PLEASE REFER TO THIS DOCKET NUMBER IN ALL MATTERS

UNITED STATES COURT OF APPEALS
Second Circuit
United States Courthouse
Foley Square
NEW YORK 10007

ELAINE B.GOLDSMITH,CLERK March 18,1987

John F. Romann
Box 312 RD #4
Easton, PA 18042

Re: SEC v. AMERICAN BD OF TRADE

Court of Appeals Docket No.

Dear Mr. Romann:

The court has been advised that a notice of appeal was filed in the above-entitled case on MAR 4, 1987 Within 10 days after filing the notice of appeal, you are required to pay the docket fee of

$65.00 to the Clerk of the District Court.

In the event the 10 day period has expired and you intend to pay the fee, follow the instructions on the attached sheet to apply to pay the fee out of time.

If you are indigent and unable to pay the fee you may apply for leave to proceed in forma pauperis. Your application to proceed in forma pauperis should first be presented to the Clerk of the district court. If your request is denied by the district court, you may apply to this court for the same relief. It is not necessary to apply to pay the fee out of time if you apply to proceed in forma pauperis.

If you are indigent and wish to have counsel assigned, you may include an application for assignment of counsel with your application to proceed in forma

pauperis. When you apply to this Court for that relief, this court reviews your entire appeal on the merits. It is possible, therefore, that your appeal will be dismissed on the merits during such a review, without oral argument.

In the event your application to proceed in forma pauperis is denied by the district court and you choose not to apply to this court for that relief or, if your application to this Court has been denied, your appeal will be dismissed unless you pay the docket fee within 10 days after service of notice of the court's decision.

PLEASE TAKE NOTE that, if within 15 days of the date of this letter, no fee has been paid and this court does not receive an application to pay the fee out of time or does not receive notice that you have applied in the district court to proceed

on appeal in forma pauperis, your appeal will be dismissed. FAILURE TO RESPOND ON OR BEFORE APR. 2, 1987 WILL RESULT IN THE DISMISSAL OF THIS APPEAL.

A sheet of instructions is enclosed for your guidance. However, following the procedures outlined is an assurance that the desires relief will be obtained.

Very truly yours,

Elaine B. Goldsmith, Clerk

PLEASE SEE REVERSE SIDE OF THIS LETTER FOR INSTRUCTIONS.

(The following Memorandum was received in an official U.S.C. USC 426 large letter sized envelope. The post mark date was 19 March 1987. Attached to the Memorandum was a copy of the above letter, with the word "V O I D" written in large black marking pen letters across the body of the letter, and a black " X "

written through the Court of Appeals Docket No."

UNITED STATES GOVERNMENT MEMORANDUM

TO: MR. ROMANN

SIR:

THE ENCLOSED LETTER WAS RECENTLY SENT TO YOU IN ERROR. PLEASE IGNORE SAID LETTER. YOUR NOTICE OF APPEAL IS BEING CONSTRUED AS A MOTION UNDER FRAP RULE 1292(b). IF AND WHEN YOUP MOTION IS GRANTED, the $65.00 DOCKETING FEE WILL BE DUE AND PAYABLE IN THE DISTRICT COURT.

THANK YOU.

BF MADSEN, DEPUTY CLERK
USCA, CASE OPENING UNIT